UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SUGAR FOX 218, LLC	:	
	:	
v.	:	C.A. No. 16-470S
	:	
GREYTHON CONSTRUCTION, LLC	:	
	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before me for a report and recommended disposition (28 U.S.C. § 636(b)(1)(B)) is Defendant's Motion to Dismiss this action pursuant to Rules 12(b)(2) and (3), Fed. R. Civ. P., or in the alternative, for an order transferring the case to the District of Connecticut pursuant to 28 U.S.C. §1404. (Document No. 6). Plaintiff opposes the Motion. (Document No. 8). After reviewing the pleadings and arguments of the parties, I recommend that Defendant's Motion be DENIED.

I. Background

Plaintiff Sugar Fox 218, LLC is a Rhode Island limited liability company with its principal place of business in Providence, Rhode Island. (Document No. 1 at ¶ 1). Defendant Greython Construction, LLC is a limited liability company with its principal place of business in Mystic, Connecticut. (Document No. 9 at ¶ 4).

Sugar Fox is a tenant of approximately 8,000 square feet of restaurant space in the Foxwoods Casino in Ledyard, Connecticut. (Document No. 1 at ¶ 15). In March 2016, the parties entered into an oral contract for preliminary demolition work on the space, on a "cost plus 10%" basis. Id. at ¶ 17. Sugar Fox maintains that Greython was anxious to commence work on the demolition in hopes that it could secure a position as the general contractor for the complete restaurant build out. Id. at

¶¶ 19-20. Ultimately, Plaintiff contends that they agreed with Greython to tender a $40,000.00 down payment to be put toward "preliminary demolition," and Greython agreed to carry the cost of the demolition until Sugar Fox's financing for the restaurant closed. Id. at ¶ 22.

Sugar Fox notes that the closing on financing for the restaurant space was delayed and that Greython remitted multiple invoices totaling approximately $175,000.00 between April and June 2016. Id. at ¶ 25. Greython ultimately pulled off the job in mid-July and sent email notice to Plaintiff's managing member, Lloyd Sugarman, stating its intention to remove itself from the project. Id. at ¶ 32. Sugar Fox alleges breach of contract, tortious interference with contractual and/or advantageous business relationships and defamation. Greython moves for dismissal, contending that it does not have sufficient minimum contacts with this District to be subject to personal jurisdiction and that venue is also improper.

II. Standard of Review

It is well established that the burden rests with the plaintiff to make a prima facie showing to withstand a challenge to personal jurisdiction. Barrett v. Lombardi, 239 F.3d 23, 26 (1st Cir. 2001) (citing Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 83-84 (1st Cir. 1997)). See also, Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 50 (1st Cir. 2002). In assessing the plaintiff's prima facie case, the Court must accept as true the "plaintiff's (properly documented) evidentiary proffers" and construe them "in the light most congenial to plaintiff's jurisdictional claim." See Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 34, 51 (1st Cir. 1998). See also Trio Realty, Inc. v. Eldorado Homes, Inc., 350 F. Supp. 2d 322, 325 (D.P.R. 2004) (citing Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 203 (1st Cir. 1994)) (the court "draw[s] the facts from the pleadings and the parties' supplementary filings, including

affidavits, taking facts affirmatively alleged by plaintiff as true and construing disputed facts in the light most hospitable to plaintiff."). In setting forth the prima facie case, the plaintiff is required to bring to light credible evidence and "cannot rest upon mere averments, but must adduce competent evidence of specific facts." Barrett, 239 F.3d at 26 (citing Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir. 1995)).

III. Personal Jurisdiction

The Due Process Clause of the Fourteenth Amendment requires that an out-of-state defendant "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The District Court may exercise two types of personal jurisdiction over defendants: general and specific jurisdiction. Astro-Med, Inc. v. Nihon Kohden Am., Inc., 591 F.3d 1, 9 (1st Cir. 2009). General jurisdiction broadly subjects the defendant to suit in the forum on all matters, including those unrelated to the defendant's contacts with the forum. Bluetarp Fin., Inc. v. Matrix Constr. Co., 709 F.3d 72, 79 (1st Cir. 2013); Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 31 (1st Cir. 2010). Specific jurisdiction, by contrast, depends on "an affiliatio[n] between the forum and the underlying controversy." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011). For a federal court sitting in diversity to exercise specific jurisdiction, Rhode Island's long-arm statute, R.I. Gen. Laws § 9-5-33(a), must authorize it. Bluetarp Fin., Inc., 709 F.3d at 79; Astro-Med, Inc., 591 F.3d at 8. The Rhode Island long-arm statute is coextensive with the permissible reach of the Due Process Clause. Id.

Plaintiff contends that Greython's business presence in Rhode Island is sufficient for the exercise of general jurisdiction. Plaintiff opted not to brief the issue of specific personal jurisdiction,

instead arguing that the present facts present a "compelling" case for general personal jurisdiction which it believes is dispositive of Defendant's Motion. (Document No. 8-1 at p. 7, n. 4).

A. General Jurisdiction

For a company, the paradigm forum for general jurisdiction is the place where it is "fairly regarded as at home." Goodyear Dunlop, 564 U.S. 924-926. Since general jurisdiction subjects a defendant to suits involving any claim against it, the standard for establishing general jurisdiction is considerably more stringent than for specific jurisdiction. Cossaboon, 600 F.3d at 32. To make the determination whether a plaintiff has sustained its burden of establishing general jurisdiction, the First Circuit has articulated a three-prong test: (1) the defendant must have sufficient contacts with the forum state; (2) those contacts must be purposeful; and (3) the exercise of jurisdiction must be reasonable under the circumstances. Id.

Analysis of the first two prongs is not mechanical or quantitative but depends on the quality and nature of the defendant's activity in the forum; although the inquiry is highly individualized and fact-specific, it is guided by the quantum of contacts deemed sufficient in other cases. Id. at pp. 32-33. The sufficiency of the contacts, the first prong, requires an examination of whether the defendant is engaged in the continuous and systematic pursuit of "extensive and pervasive" general business activities in the forum state. See, e.g., Cossaboon, 600 F.3d at 32; Barry, 909 F. Supp. at 75. The second – the purposefulness of the contacts – requires an affirmative demonstration that the defendant purposefully and voluntarily directs its activities toward the forum to avail itself of the privilege of conducting activities within the forum, thereby invoking the benefits and protections of the state's laws. Cossaboon, 600 F.3d at 32. In examining whether contacts support general jurisdiction, the court may consider those prior to the filing of the lawsuit, including those that

occurred after the cause of action arose but before the suit was filed.[1] Id. at p. 29; Harlow v. Children's Hosp., 432 F.3d 50, 64-65 (1st Cir. 2005). The third prong examines whether the exercise of general jurisdiction is reasonable. Cossaboon, 600 F.3d at 33. The reasonableness inquiry is "secondary rather than primary," and a court does not address it unless the plaintiff has cleared the first and second prongs. Id.; Donatelli v. Nat'l Hockey League, 893 F.2d 459, 465 (1st Cir. 1990).

The evidence presented by Plaintiff establishes that Defendant has purposefully maintained systematic and continuous contacts with the State of Rhode Island. See Goodyear Dunlop, 564 U.S. at 924, 928 (office, files and president of company in forum render defendant "at home" in forum state). Defendant's website states that it has locations in Providence and Watch Hill, Rhode Island, and it has maintained a steady business presence in Rhode Island. (Document No. 9 at ¶ 8); see 4A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1067.5 (3d ed. 2002) ("[T]he defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or maintaining one or more offices there; activities that are less extensive than that will not qualify for general in personam jurisdiction").

Defendant states that its employees all reside and "regularly work" in Connecticut. (Document No. 6 at p. 17). Plaintiff, however, contends that Defendant routinely sends employees into Rhode Island to complete work, evidenced by representations made on Defendant's website, as well as photographs of Defendant's work trucks in Rhode Island accompanied by Defendant's signage. (Document No. 8-1 at p. 4); see Walden v. Fiore, 134 S. Ct. 1115, 1122 (2014) (holding that physical presence, while not a "prerequisite," is certainly "relevant"). Plaintiff also represents

[1] This approach stems from the basic distinction between general and specific jurisdiction. Unlike specific jurisdiction, which focuses on the cause of action, the defendant and the forum, general jurisdiction is dispute blind with the sole focus on whether the defendant is "fairly regarded as at home" in the forum. Goodyear Dunlop, 564 U.S. at 924; Harlow, 432 F.3d at 65.

that "Greython's workers frequently travel to Providence to work on Greython's projects located [t]here." (Document No. 8-1 at p. 14). In addition, Plaintiff notes that Defendant's CEO regularly "travels to and performs services in Rhode Island" as well. (Document No. 8-1 at p. 10).

Sugar Fox also notes that Greython's website lays the groundwork for a finding that Greython has sufficient and purposeful contacts with this District. On the website, Greython states that it has completed and is currently completing projects in Rhode Island, including maintaining a permanent "on call" status for one project in Rhode Island. (Document No. 9-6 at p. 19). Additionally, as noted, the website lists two Rhode Island locations on its website, presumably as "offices" and also discusses completion of a variety of work in Rhode Island. Although the website alone would not be sufficient to confer general personal jurisdiction in this case, the information contained on the website and presented in the Affidavit lends support to a finding of personal jurisdiction on a variety of grounds. See, e.g. McBee v. Delica, 417 F.3d 107,124 (1st Cir. 2005). In this case, in addition to the advertising visible at Defendant's Rhode Island work sites and the establishment of locations in Providence and Watch Hill, Greython had also completed or was in the process of completing at least seven projects in Rhode Island in the months prior to suit. (Document No. 8-1 at pp. 8-9).

Defendant is also registered to do business in Rhode Island. (Document No. 9 at ¶ 4). While "[c]orporate registration...adds some weight to the jurisdictional analysis, [ ] it is not alone sufficient to confer general jurisdiction." Cossaboon, 600 F.3d at 37 (1st Cir. 2010); see Sandstrom v. ChemLawn Corp., 904 F.2d 83, 89 (1st Cir. 1990). Given the various projects completed by Defendant, its registration to do business in Rhode Island, proximity to Rhode Island as well as representations on its website, the contacts with this State are not random or fortuitous, but instead,

the type of continuous and systematic contacts with Rhode Island such that it should reasonably anticipate being subject to suit in Rhode Island courts.

Although the first two prongs of the analysis have been satisfied, this Court still must consider whether Rhode Island's assertion of jurisdiction is fair and reasonable under these circumstances. "[G]auging fairness requires an assessment of reasonableness for, in certain circumstances, unreasonableness can trump a minimally sufficient showing of relatedness and purposefulness." Ticketmaster–New York, 26 F.3d at 210. "[T]he reasonableness prong of the due process inquiry evokes a sliding scale." Id. That is, "the weaker the plaintiff's showing on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction. The reverse is equally true: an especially strong showing of reasonableness may serve to fortify a borderline showing of relatedness and purposefulness." Id. In making this determination, the Court considers the so-called "Gestalt" factors. See, e.g., World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980). The "Gestalt" factors include:

> the defendant's burden of appearing [in the forum state], (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.

Ticketmaster–New York, 26 F.3d at 209 (citing Burger King, 471 U.S. at 477). While the plaintiff has the burden of showing relatedness and purposeful availment, the defendant has the burden of showing that jurisdiction is unreasonable. Id. at p. 206.

In the present case, "[t]he parties have identified few burdens, interests, or inefficiencies that cut strongly in favor of or against jurisdiction." C.W. Downer & Co. v. Bioriginal Food & Sci. Corp., 771 F.3d 59, 70 (1st Cir. 2014). The first factor to consider is the Defendant's burden of

appearance in Rhode Island. Defendant, a company registered in Connecticut, would be required to travel to Rhode Island if this Court maintains jurisdiction over it. "[M]ounting an out-of-state defense most always means added trouble and cost," BlueTarp Fin., 709 F.3d at 83, and modern travel "creates no especially ponderous burden for business travelers," Pritzker v. Yari, 42 F.3d 53, 64 (1st Cir. 1994). For the burden to be such that it would affect the personal jurisdiction analysis, Defendant must show that it is "special or unusual." BlueTarp Fin., 709 F.3d at 83 (quoting Hannon v. Beard, 524 F.3d 275, 285 (1st Cir. 2008)) (internal quotation marks omitted). Defendant has failed to show that the burden in this case would be in any way "special or unusual." To the contrary, Plaintiff pointed out that "the proximity of the [f]ederal [c]ourthouse in Providence is *closer* to [Defendant] than any United States District Court located in the State of Connecticut." (Document No. 8-1 at pp. 10-11). Therefore, Defendant's argument that it would be burdensome to require it to appear in Rhode Island hardly weighs in its favor.

The second consideration is the interest of the forum. The Supreme Court has explained, "[a] State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." Burger King, 471 U.S. at 473, 105 S. Ct. 2174 (quoting McGee v. Inter'l Life Ins. Co., 355 U.S. 220, 223 (1985). Therefore, the second consideration also weighs in favor of Plaintiff.

The third factor to consider is that of Plaintiff's convenience. "Courts regularly cede some deference to the plaintiff's choice of forum." Baskin–Robbins Franchising LLC v. Alpenrose Dairy, Inc., 825 F.3d 28, 41 (1st Cir. 2016). Plaintiff is a company located in Rhode Island, and it would plainly be more convenient for it to resolve the matter in Rhode Island. (Document No. 8-1). Accordingly, the third consideration weighs in favor of Plaintiff.

Next, this Court considers the fourth factor – the effect on the administration of justice. In the present case, the "interest of the judicial system in the effective administration of justice does not appear to cut in either direction." Ticketmaster-N.Y., 26 F.3d at 211. This factor is "self-evidently a wash." Baskin–Robbins, 825 F.3d at 41 ("Even though Massachusetts courts can effectively administer justice in this dispute, they have no corner on the market.") (internal citations omitted).

Finally, the last "Gestalt" factor is that of pertinent policy arguments. It is true that Connecticut "has a legitimate stake in providing its citizens with a convenient forum for adjudicating disputes." Baskin–Robbins, 825 F.3d at 41. However, there is no injustice in permitting Rhode Island to interpret Connecticut law as "federal district courts are in the regular practice of applying laws of other fora." C.W. Downer, 771 F.3d at 70 (internal citations omitted).

Overall, an analysis of the "Gestalt" factors do not show that a finding of personal jurisdiction over the Defendant within Rhode Island "would be so unfair or unreasonable as to raise constitutional concerns." Baskin–Robbins, 825 F.3d at 41.

Accordingly, Plaintiff has established that this Court has general personal jurisdiction over Defendant, and the Court recommends that the District Court DENY Defendant's Motion to Dismiss for lack of personal jurisdiction.

IV. Venue

Pursuant to 28 U.S.C. § 1391(b), venue is proper only in a judicial district in which Defendant resides, where a substantial part of the events or omissions giving rise to the claim occurred or where Defendant is subject to personal jurisdiction with respect to such action. Because the Court has personal jurisdiction over Defendant, venue in this District is proper, and the Court

recommends that Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue also be DENIED.

Next, the Court considers Defendant's alternative Motion that the Court transfer venue to the District of Connecticut pursuant to 28 U.S.C. §1404(a). Under §1404(a) a district court may transfer any civil action "to any other district where it may have been brought for the convenience of parties and witnesses, in the interest of justice." Coady v. Ashcraft & Gerel, 223 F.3d 1, 11 (1st Cir. 2000) (quoting 28 U.S.C. § 1404(a)). For the reasons discussed herein, the Court finds Defendant's argument unpersuasive.

In Stewart Org., Inc. v. Ricoh Co., the Supreme Court noted that §1404(a) is "intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." 487 U.S. 22, 29 (1988) (citations omitted). Defendant bears the burden of demonstrating that transfer is appropriate, and there is a "strong presumption in favor of the plaintiff's choice of forum." Coady, 223 F.3d at 11.

While Defendant focuses on the absence of reference to Rhode Island in the contract at issue and the domicile location of the majority of its employees, Plaintiff has established that Defendant's employees, including its CEO, regularly travel to Rhode Island for business purposes. Moreover, as previously noted, Plaintiff points out that "the proximity of the [f]ederal [c]ourthouse in Providence is closer to [Defendant] than any United States District Court located in the State of Connecticut." (Document No. 8-1). While Defendant argues that "[l]itigation would be most convenient in Connecticut," "[i]nconvenience to the defendant is not sufficient to grant § 1404(a) relief, where the transfer would merely shift the inconvenience to the other party. 'Section 1404(a) provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient

or inconvenient.'" Brian Jackson & Co. v. Eximias Pharm. Corp., 248 F. Supp. 2d 31, 38 (internal citations omitted). Accordingly, Defendant has failed to meet its burden in seeking to establish that the matter should be transferred to the District of Connecticut for convenience and fairness. See Astro–Med, 591 F.3d at 8.

V. Conclusion

For the foregoing reasons, I recommend that Defendant Greython's Motion to Dismiss or Transfer (Document No. 6) be DENIED.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
March 17, 2017